IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.SASIDHARAN NAMBIAR

WEDNESDAY, THE 7TH FEBRUARY 2007 / 18TH MAGHA 1928

RSA.No. 689 of 2005(F)

AS.339/2001 of III ADDITIONAL DISTRICT COURT (ADHOC), THRISSUR
OS.706/1999 of II ADDL.M.C.,THRISSUR

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APPELLANTS/1ST DEFENDANT:

M.J.DENNIS,
MANAGING DIRECTOR, RUBBER COATS (INDIA) PVT. LTD.,
A-43, INDUSTRIAL ESTATE, OLLUR,THRISSUR DT.-680306

BY ADV. SRI.P.K.ASHOKAN

RESPONDENTS: PLAINTIFF/2ND DEFENDANT:

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1. P.D. JUSTIN,
"ASHLY HEAVEN", 164-HILL GARDENS,
KUTTANELLUR, THRISSUR-680 014.

2. T.V.RAPPAI,
PRODUCTION DIRECTOR, RUBBER COATS (INDIA) PVT.LTD.
A-43, INDUSTRIAL ESTATE,OLLUR,THRISSUR DT.-680 306.

BY ADV. SRI.ROBSON PAUL
SRI.C.A.CHACKO

THIS REGULAR SECOND APPEAL HAVING COME UP FOR ADMISSION ON 07/02/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

M.SASIDHARAN NAMBIAR, J.

R.S.A.No.689 OF 2005 (F)

Dated this the 7 th day of February, 2007.

J U D G M E N T

Defendant in O.S.706/99 on the file of Additional Munsiff Court, Trhissur is the appellant. Respondent is the plaintiff. Respondent, an engineering graduate was the Chief Engineer of M/s Lathia Rubber Manufacturing Company Ltd. Thereafter he was the Technical Director of M/s. Rubber Coats (India) Private Ltd, from 1978 to 1995. He filed a suit against first appellant, the Managing Director and second appellant, the Production Director of M/s. Rubber Coats (India) Private Ltd, contending that Ext.A5 notice published by them contains false, malicious and defamatory statements made with an intention to defame his reputation. Respondent sought damages of Rs.50,000/- for the loss of reputation caused by the appellants. Appellant admitted the issuance of Ext.A5 notice. The case of appellant was that the notice had to be issued because of the communication sent by respondent to the customers of the company and published in Indian Express. According to the appellants, the publication made by respondent made an impression in the minds of the customers of Rubber Coats (India) Ltd, to the effect that the company had already ceased its operation and does not entertain any further orders from

customers and the malafide message thus conveyed by respondent was that the company is in a very bad shape. According to appellant many of the customers enquired to them whether the company is still working and therefore "in order to protect the interest of the company, appellants were forced to issue Ext.A5 notice to its customers in good faith".

2. Learned Munsiff on the evidence of PW1 to 3 and DW1 and Ext.A1 to A14 and B1 to B3 found that contents of Ext.A5 notice is defamatory and it adversely affected the reputation of respondent and therefore granted a decree for realisation of damages of Rs.10,000/-. Appellant challenged the decree and judgment before District court, Thrissur in A.S.339/2001. Learned Additional District Judge analysed the material and re-appreciated the evidence and found that allegations in Ext.A5 notice are perse defamatory and evidence of DW1, the second appellant, establish that the contents of Ext.A5 notice would effect the reputation of any person and accepted evidence of PW1 to 3 and held that the defamatory statements in Ext.A5 effected the reputation of respondent. Appeal was dismissed confirming the decree and judgment of the trial court. This second appeal is filed challenging the concurrent decree and judgment of the courts below.

3. Learned counsel appearing for appellants was heard.

4. Arguments of learned counsel was that courts below did not properly appreciate the defence taken by the appellants and wrongly appreciated the defence as justification by truth when in fact what was contended in the written statement was that publication of Ext.A5 notice was necessitated to protect the interest of the company and in good faith. It was vehemently argued that if the courts below had appreciated the evidence, in that background, the yardstick for appreciating the evidence would have been different and therefore the appreciation of evidence was perverse and hence the findings are to be interfered with. It was also argued that the contents of Ext.A5 notice cannot be said to be defamatory and it had to be issued by the appellants on account of the publication of notice by the respondent by addressing the customers of the company and also by publishing in newspaper conveying an impression to the customers that the company had practically stopped working and therefore courts below should not have found that the allegations in Ext.A5 notice are defamatory.

5. Learned Munsiff and learned Additional District Judge

appreciated Ext.A5 notice in the proper perspective. The relevant portion of Ext.A5 reads:

> "We would also take this opportunity to caution you against certain nefarious activities of one of our erstwhile Directors Mr. Justin who was stripped of his powers by the Board of Directors for gross financial irregularities. Recently it has come to the light that he has sent out a note to all out customers to the effect that our organisation was sought to be wound up by this chronic court -bird- Mr.Justin has indulged in this cheap gimmick to prop up a very shaky unit which he has set up without any worthwhile manufacturing facilities in competition with our unit".

6. Ext.A5 contains three allegations. Firstly, there is an allegation that respondent engaged in "certain nefarious activities". Secondly it was alleged that respondent was stripped of his powers by the Board of Directors for gross financial irregularities. Thirdly it was stated that he was a chronic court-bird. Learned Munsiff and learned Additional District Judge on the evidence found that respondent was

not stripped of his powers by the Board of Directors much less for gross financial irregularity as alleged in Ext.A5 notice. No evidence was adduced by appellants to show that respondent engaged in any nefarious activities. Arguments of learned counsel appearing for appellants was that publication of communication to the customers against the company is a nefarious activity. But there is no evidence to support that any such nefarious activity. The evidence of DW1, second appellant, who was examined by the appellants is sufficient to prove that the allegations in Ext.A5 badly affected the reputation of respondent. DW1 admitted that if a publication is made to the effect that DW1 is expelled from the company on the ground of financial irregularity, it would adversely affect his reputation. It was also admitted by DW1 that respondent was not expelled from the company and infact he resigned from the company. If that be so, as rightly found by the courts below allegations in Ext.A5 against respondent are perse defamatory. It was also proved that the publication affected the reputation of the respondent as claimed. Arguments of learned counsel was that the misreading of the defence by the courts below caused perverse appreciation of facts and evidence by the courts below and it is a substantial question of law. What was

argued was that the defence was not one of justification by truth but that publication had to be made to protect the interest of the company in good faith. Though the word justification by truth was not specifically pleaded in the written statement, reading of the statement as a whole, as rightly understood by the courts below, reveal that appellants were justifying the allegation in Ext.A5 notice as correct. Moreover even if it is taken that respondent has made incorrect allegations in the communications sent to the customers, that will not justify the action of appellants in publishing Ext.A5 notice incorporating defamatory statements. Therefore on account also the findings of the courts below does not warrant interference.

7. A second appeal shall lie only if a substantial question of law is involved. Concurrent findings of facts, however erroneous they may be, cannot be interfered unless it is established that conclusions drawn by the courts below were contrary to the mandatory provisions of law applicable or its settled position on the basis of pronouncements made by Apex court or was based on inadmissible evidence or arrived at without evidence as held by the Apex court in Kondiba Dagadn Kadam vs. Savithribhai Sopan Guji ((1999) 3 SCC 722) and Y.D.Shrawane vs. N.Harkachand Shaw ((2002) 6 SCC 404).

8. There is no substantial question of law involved in the appeal to exercise the jurisdiction under Section 100 of code of Civil Procedure.

The second appeal is dismissed in limine.

M.SASIDHARAN NAMBIAR,
JUDGE.

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